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DEPT FOR EUR/CE AND EUR/SCE; STOCKHOLM FOR DAS GARBER

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TAGS: PREL EUN HR SI  
SUBJECT: SLOVENIA SWALLOWS HARD, PREPARES TO ACCEPT NEW EU  
PROPOSAL ON BORDER DISPUTE WITH CROATIA

Classified By: CDA Brad Freden, reasons 1.4 (b) and (d).

**¶1. (C/NF) SUMMARY.** Slovenia has reacted cautiously to the latest proposal put forth by EU Enlargement Commissioner Olli Rehn to resolve the border dispute between Croatia and Slovenia and allow Croatia's accession negotiations to move forward. In contrast to the joyous Croatian reaction reported in the press, every Slovenian official with whom we have spoken appears to have eaten some bad klobase. Not only are they feeling queasy about their ability to sell this deal to the Slovenian public, they are unhappy with what they perceive as Washington's tilt toward Zagreb. Notwithstanding these doubts and complaints, we have been told privately that the Government is preparing to accept the proposal. Speaker of Parliament Pavel Gantar confirmed to CDA April 27 that Prime Minister Borut Pahor would begin a round of intensive consultations with the leaders of all parliamentary parties on April 28. Ambassador Istok Miroslavic, the MFA's equivalent of an under secretary for bilateral relations, said Slovenia would provide its formal response to Rehn on or about May 10.

According to both Miroslavic and the Czech Ambassador (representing the EU Presidency), there are three problematic issues:

-- Ratification of the agreement and the timing of the removal of Slovenia's hold on accession talks. Croatia insists Slovenia lift provisionally its hold accession on talks as soon as an agreement is signed, while Slovenia says it cannot allow talks to continue until both parliaments express their approval, as stipulated in Rehn's proposal.

-- The composition of the arbitration tribunal. Slovenia is unhappy with the draft agreement's stipulation that if the two sides cannot reach consensus on three "neutral" arbitrators (out of a total of five) within 15 days, they will be chosen by the President of the International Court of Justice. The other two arbitrators will be chosen by the countries themselves. Given the minute likelihood that Croatia and Slovenia will reach agreement in 15 days, this means in effect that four of the five arbitrators will reflect Croatia's preference for a juridical solution as opposed to a political one.

-- Whether the tribunal will be empowered to address Slovenia's "access to" vs. "contact with" international waters, and how that mandate will be worded.

We agree with the Czech Ambassador that the last issue is likely to prove the most difficult. Slovenia seems to have

grudgingly accepted that the tribunal will be biased in favor of a juridical solution (point 2). And the Czechs believe Zagreb will eventually accept the need for parliamentary ratification before accession talks resume (point 1). END SUMMARY.

SLOVENIA'S ANSWER TO REHN: "YES, BUT . . . "

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¶2. (C) Miroslav told us April 24 that Slovenia would accept the latest Rehn proposal "in principle" after discussion within the government and consultation with the parliamentary Foreign Affairs Committee. He also said that Slovenia would provide its formal response to Rehn on or about May 10. The Slovenians are unhappy with some details<sup>8</sup> of Rehn's proposal, but Miroslav said he thought these could be worked out. He asserted that Slovenia had shown flexibility and willingness to compromise, pointing out that Slovenia had abandoned its insistence on political mediation and was now giving up its insistence on mixed mediation/arbitration in favor of Rehn's latest proposal for what amounts to judicial arbitration. "Slovenia has engaged seriously, been very cooperative and replied quickly" throughout the talks, Miroslav asserted. He repeated several times that Slovenia wants Croatia -- and the other countries of the western Balkans -- to join the EU as soon as possible. Citing EUR Assistant Secretary Dan Fried's conversation with Director General Andrej Benedejcic in Washington on April 20, Miroslav called for a balance<sup>8</sup> in the U.S. position and said that he hoped the U.S. was delivering a similar message in Zagreb. "Our impression," he said, "is that only Slovenia is under

pressure to resolve this dispute.<sup>8</sup> We assured him that was not the case.

TWO REDLINES

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¶3. (C/NF) Though not happy about it, Slovenia seems resigned to the fact that the make-up of the arbitration panel will favor Croatia's juridical position on the maritime border. He stressed, however, that Rehn's proposal called for both parliaments to ratify the proposal as a condition of acceptance, and he said unequivocally that Slovenia would not lift the blockade on accession talks until both parliaments voted. Not only was it "legally impossible" for Slovenia to begin implementing any international agreement without the approval of parliament, it would be political suicide to move ahead without a reciprocal vote in the Croatian parliament. The Czech ambassador thought Croatia could probably be convinced to accept the demand for a vote before accession talks resume. In Slovenia's case, only a simple majority is required to accept the Rehn proposal; however, Miroslav said that the government needs the support of the largest opposition party, former PM Janez Jansa's SDS, going into arbitration because a 2/3 majority will be required to ratify Croatia's accession treaty at the end of the process.

¶4. (C) Slovenia's second redline concerns the perennial issue of "contact" with international waters vs. "access" to international waters. Slovenia insists that the final agreement on arbitration leave open the possibility of Slovenia having a maritime border with the high seas -- in effect, a corridor to international waters -- and is not limited to consideration of a "regime" for giving Slovenia access through Croatian waters. In his discussion of the Rehn proposal, Miroslav got down to the level of independent and subordinate clauses, and whether the placement of certain words in one or the other would tend to prejudge the outcome. Suffice it to say that the Slovenians are not taking this particular issue lightly.

MOM, THE CROATIANS WON'T LEAVE ME ALONE!

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COMMENT: YOU LOOK LIKE YOU COULD USE SOME MYLANTA . . .

¶6. (C) As PM Pahor begins briefing the leaders of parliamentary parties today, public criticism of the proposal is bound to appear. Zmago Jelincic, the leader of the Slovenian National Party has already said that Rehn "completely caved in to Croatian demands." Jelincic's reaction is to be expected, but the government really needs the support of former Prime Minister Janez Jansa's SDS. While the Coalition has enough votes by itself to approve the arbitration proposal with a simple majority in parliament, Slovenia's eventual ratification of the accession treaty will require a 2/3 majority. In the end, whatever the outcome of arbitration, Slovenians (and Croatians) must see the process as having been fair. If Slovenians see themselves as having been pressured or duped, there is little doubt but there will be a push for a popular referendum when it comes time to ratify Croatia's accession treaty. And that, we know from recent experience, would be a problem.

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FREDEN